APPENDIX "A".

Constitutional Provisions, Federal Statute and General Law Involved.

1. That portion of the Fifth Amendment to the Constitution of the United States which provides:

"No person shall * * * be deprived of life, liberty, or property without due process of law."

2. That portion of the Fourteenth Amendment, Section (1) which, among other things, provides:

"* * * nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. That portion of Article X, Sec. 216, sub-division (7), of "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, and as amended to July 1938, U. S. C. A. sections 501-676, which provides that a plan of reorganization under the chapter:

"(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or (b) by a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such claims; or (d) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection."

and Article XI, Sec. 221, sub-division (2) which provides:

"The judge shall confirm a plan if satisfied that (2) the plan is fair and equitable, and feasible."

4. The general law involved relates to the rule generally accepted and which prevails in the State of New Jersey, that a provision in a note or other contract for the payment of money by which a debtor agrees to pay, after maturity, interest at a higher rate than permitted by the usury law, or, a sum of money which will exceed that rate, does not render the note or other contract usurious, and is enforcible.

APPENDIX "B".

Questions Presented.

1. Did the court below, in holding the provision in the mortgage for interest at 2½% per month after maturity and default to be a penalty, take away a substantive property right from the mortgagee in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States?

2. Did the court below err in reversing the ruling of the District Court, that under Chapter X of the Bankruptcy Act, when a class of creditors consists of only one party, its consent must be obtained before its claim can be affected by the plan of reorganization?

3. Did the court below err in apportioning the claim of the mortgagee, (the mortgage having been held valid by the District Court), by taking from the mortgagee the interest payable to it under the terms of the chattel mortgage, and turning it back to the debtor or its successor?

4. Was it lawful for the court below to require petitioner, a secured creditor, to share its inadequate security with an insolvent debtor?

5. May a plan of reorganization which required a secured creditor, the only one of its class, to accept less than the

full amount of a mortgage debt and accrued and agreed interest to the date of payment, be deemed to be fair, equitable and feasible, under Chapter X of the Bankruptcy Act?

6. Did the court below err in failing to follow applicable general law and local decisions of the courts of New Jersey that a contract to increase interest after default does not constitute a penalty?

7. Did the Circuit Court of Appeals below decide the foregoing questions in a manner in conflict with applicable decisions of this court, as well as of the courts of New Jersey, so as to call for an exercise of this court's power of supervision?

APPENDIX "C".

Referee's Recommendation on Rate of Interest to be Paid to Modern Factors Company.

"At the hearing before me on May 26, 1941, the Debtor filed a notice served on Modern Factors Company that it would apply to have the interest on the chattel mortgage held by Modern Factors Company fixed by the Court. Max L. Rosenstein, Esquire, appeared for the Modern Factors Company.

This question was argued before me on the 26th day of May, 1941. The plan provides: 'The Debtor shall pay Modern Factors Company the principal amount due of $31,600.00 plus interest thereon from September 25, 1941, at a rate to be fixed by the Court upon the hearing for confirmation of the plan as altered.'

It is conceded by the parties that there is $31,600.00 due on the principal of this mortgage, together with interest from September 25, 1940, on which date the mortgage became due. On March 25, 1940, the date of execution of the mortgage, the interest for six months was paid in advance. The mortgage provided that if it was not paid on the due date, September 25, 1940, interest would accrue on the mortgage at the rate of 2½% per month.

It is the contention of the debtor that in view of the fact that the petition herein was filed prior to September 25, 1940, that therefore the claimant can only insist upon the receipt of interest at the rate of 6% per year from the 25th day of September, 1940. The Modern Factors Company contends that the interest rate fixed in the mortgage was agreed to between the parties and that therefore by law they are entitled to payment in full according to the provisions of the said mortgage. It is further contended by the debtor, that according to the Statutes of the State of New Jersey, being Compiled Statutes of New Jersey, 1937, 31:1-1, the law of New Jersey prohibits interest in excess of 6%. It is further contended that although Revised Statutes of New Jersey, 31:1-6, prohibits corporations from pleading usury, nevertheless the Modern Factors Company are prohibited from collecting in excess of 6% since September 25, 1940, because of the proceedings herein. The Debtor cites the case of Dayton versus Stanard, 60 L. Ed. 1190; 241 U. S. 598. This case holds that where there was a tax sale held without the authority of the Bankruptcy Court, which sale was later declared void, the purchaser at said tax sale could recover back the amount paid for the tax certificate but could not recover the amount of larger interest which was required on redemption of tax sales. It would appear, however, that this cause is not exactly in point as the claimant in that case might have been considered as a volunteer in making the said payments. The debtor also mentions the case of Martin Custom Made Tire Corporation, 108 Fed. (2d) 172, (Second Circuit, 1939), where it is held that a mortgage which was void as to a Trustee in bankruptcy is also void as to the debtor in reorganization (even though it would be good between the parties, to wit: an unrecorded mortgage). In other words, it is insisted that the debtor is in the position of a Trustee in Bankruptcy, and that as against the Trustee no more than 6% could be recovered subsequent to September 25, 1940.

However, there is no question about the validity of the mortgage in the case at bar. We are here considering a reorganization proceeding, and there appears to be a serious doubt that the security can be taken away from a creditor

without paying him in full, unless the claim is an illegal one. The United States Circuit Court of Appeals, for the Second Circuit, has held in a similar case, In the Matter of International Raw Material Corporation, 22 Fed. (2d) 920, as follows: 'Where there seems to be no doubt that the parties agreed among themselves to pay 6% as interest on a loan and an additional sum of 1½% per month as so-called Commissions, we know of nothing to prevent such an agreement. The New York Statute provides that no corporation shall interpose the defense of usury, and this has been held to repeal usury laws so far as contracts of corporations are concerned. Neither the corporation nor those who succeed to its rights, nor its sureties, are heard to object to their bargain, either at law or in equity because of usury.' Later on the same opinion holds as follows: 'Corporation contracts to pay more than the statutory rate of interest have been and we believe should be left to the agreement of the parties and not disturbed in the absence of fraud and duress.' See also Gotham Can Co., 48 Fed. (2d) 540.

It would appear from the latter two authorities that a creditor with security could collect interest in accordance with the contract made between the parties, and that this should not be disturbed in the absence of fraud and duress. There appears to be no evidence of fraud and duress in this matter, and I therefore recommend that an order be entered that the debtor pay the Modern Factors Company its claim for $31,600.00, together with interest at the rate of 2½% per month from September 25, 1940."